

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

**CATINA PARKER, as Personal Representative
of the Estate of Leonard Parker, Jr., Deceased**

PLAINTIFF

VERSUS

NO.1:21-cv-00217-HSO-RHWR

**The CITY OF GULFPORT, a municipal
corporation; JASON CUEVAS, in his individual
and official capacity; and JOHN DOE OFFICERS
#1-5 in their official and individual capacities**

DEFENDANTS

**MOTION OF CUEVAS FOR SUMMARY JUDGMENT
ON THE BASIS OF QUALIFIED IMMUNITY**

COMES NOW the Defendant, Jason Cuevas, by and through his counsel of record, Copeland, Cook, Taylor & Bush, P.A., and submits his Memorandum Brief in Support of his Motion for Summary Judgment on the Basis of Qualified Immunity, and would show unto the Court the following, to wit:

1.

In this lawsuit, the Plaintiff, Catina Parker, as personal representative of the Estate of Leonard Parker, Jr., has asserted a 42 U.S.C. §1983 claim for excessive force in violation of the Fourth Amendment of the United States Constitution. The events in question occurred in Gulfport, Mississippi during the early morning hours of February 1, 2020 between the Defendant, Jason Cuevas, a police officer of the Gulfport Police Department, and Leonard Parker, Jr. Officer Cuevas contends that while he was attempting to get Parker's attention to stop his truck, both by the use of multiple flashlights and verbal commands, Parker continued to drive towards Officer Cuevas, even after he attempted to get out of the way. When Parker continued towards

Officer Cuevas, he felt that his safety was threatened and therefore, fired his service weapon at the driver of the truck. One of the bullets struck Parker and he subsequently passed away.

2.

Officer Cuevas has denied all allegations of excessive force and has raised the defense of qualified immunity. The Court has allowed limited discovery on this specific issue and, per the Court's Scheduling Order, Officer Cuevas now files his summary judgment on the issue of qualified immunity.

3.

The issues in this case boil down to what occurred in the 30 seconds that followed Officer Cuevas' arrival to 25th Street. Specifically, the location of Officer Cuevas in relation to Parker's truck at the time the shots were fired and whether Parker's truck was moving in the direction of Officer Cuevas or if it was stopped. Other than perhaps Tremaine Markray, Parker's passenger, no other alleged eye witness can testify as to what Officer Cuevas would have seen from his perspective as these alleged witnesses were standing, more or less, at a right angle to the forward moving truck; i.e., on the front lawn or the front porch of Stephanie Baldwin's house and their view would have been limited to the rear and/or driver's side of Parker's truck. No matter how the Plaintiff tries to skew her claims, the objective, physical evidence collected at the scene clearly demonstrates that Officer Cuevas was at the front of the truck and the truck was moving at him at the time the shots were fired. His actions were objectively and legally reasonable under the clearly established Constitutional law.

4.

In support of this Motion, the Defendant relies upon the following:

1. Excerpts from the MBI Case File Report, a copy of which are attached hereto as Exhibit "1";
2. 911 Recording, attached hereto as Exhibit "2", to be submitted by conventional filing;
3. Excerpts from the MBI Biloxi Report, a copy of which are attached hereto as Exhibit "3";
4. Int. Answer No. 13 of Cuevas, a copy of which is attached hereto as Exhibit "4";
5. Excerpts from the Deposition of Officer Cuevas, a copy of which are attached hereto as Exhibit "5"
6. Audio of MBI Interview of Officer Cuevas, attached hereto as Exhibit "6", to be submitted by conventional filing;
7. Video of MBI Interview of Officer Cuevas, attached hereto as Exhibit "7", to be submitted by conventional filing;
8. Affidavit of Officer Cuevas, attached hereto as Exhibit "8", with certain exhibits attached to be submitted by conventional filing;
9. Excerpts from the Deposition of Investigator Teates, a copy of which are attached hereto as Exhibit "9";
10. Affidavit of James P. Molinaro, attached hereto as Exhibit "10";
11. Affidavit of Howard Ryan, attached hereto as Exhibit "11";
12. Affidavit of Michelle Desroche, attached hereto as Exhibit "12", with certain exhibits attached to be submitted by conventional filing;
13. Excerpts from the Deposition of Tremaine Markray, a copy of which are attached hereto as Exhibit "13";

14. Excerpts from the MBI Scene Photos, attached hereto as Exhibit "14", which may be split into multiple subparts due to size;
15. Excerpts from the MBI CSU Garage Photos, attached hereto as Exhibit "15", which may be split into multiple subparts due to size;
16. Video of Dash Cam of Officer Cook, attached hereto as Exhibit "16", to be submitted by conventional filing;
17. Audio of MBI Interview of Tremaine Markray, attached hereto as Exhibit "17", to be submitted by conventional filing; and,
18. Video of MBI Interview of Tremaine Markray, attached hereto as Exhibit "18", to be submitted by conventional filing.

WHEREFORE, PREMISES CONSIDERED, the Defendant Jason Cuevas moves the Court to find that he is entitled to qualified immunity and that he is entitled to a dismissal, with prejudice, of the Plaintiff's claim that he should be held liable in his individual capacity under 42 U.S.C. § 1983. This Defendant prays for such other relief to which this Court determines that he is entitled.

Respectfully submitted, this the 16th day of October, 2023.

JASON CUEVAS

BY: COPELAND, COOK, TAYLOR & BUSH, P.A.

BY: /S/ WILLIAM E. WHITFIELD, III

Mississippi Bar No. 7161

/S/ KAARA L. LIND

Mississippi Bar No. 10604

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2023, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

Charles R. Mullins, Esq.
Courtney Sanders, Esq.
Coxwell & Associates, PLLC
P.O. Box 1337
Jackson, MS 39215
chuckm@coxwelllaw.com
courtneys@coxwelllaw.com

and

Nicolette A. Ward, Esq.
Bhavani K. Raveendran, Esq.
Javier Rodriguez, Jr., Esq.
Samantha A. Harton, Esq.
Romanucci & Blandin, LLC
321 N. Clark St., Suite 900
Chicago, IL 60654
nward@smbtrials.com
braveendran@rblaw.net
jrodriguez@rblaw.net
sharton@rblaw.net

Attorneys for Plaintiff

Jeffrey S. Bruni, Esq.
P.O. Box 1780
Gulfport, MS 39502
jbruni@gulfport-ms.gov
**Attorney for Defendant,
City of Gulfport**

/S/ WILLIAM E. WHITFIELD, III
/S/ KAARA L. LIND

William E. Whitfield, III
Kaara L. Lind
COPELAND, COOK, TAYLOR & BUSH, P.A.
Centennial Plaza
200 East Beach Boulevard, Building #5
Gulfport, Mississippi 39507
P.O. Box 10
Gulfport, Mississippi 39502-0010
telephone (228) 863-6101
telecopier (228) 863-9526